

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Hardage Hotels,**  
Petitioner-Appellant,

v.

**Polk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 09-77-1372**  
**Parcel No. 291/00773-003-000**

On July 26, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Hardage Hotels, was represented by Attorney Robert Thomson of Grefe & Sidney, PLC, Des Moines, Iowa. The Polk County Board of Review was represented by Assistant County Attorney David Hibbard. The Appeal Board now having examined the entire record, having heard the testimony, and being fully advised, finds:

***Findings of Fact***

Hardage Hotels (Hardage), owner of property located at 11428 Forest Avenue, Clive, Iowa, appeals from the Polk County Board of Review decision reassessing its property. The real estate was classified commercial for the January 1, 2009, assessment and valued at \$4,550,000; representing \$1,060,000 in land value and \$3,490,000 in improvement value. Hardage protested to the Board of Review on the grounds the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b) and that there had been a change downward in value since the last assessment under sections 441.37(1) and 441.35(3). It asserted the fair market value was \$2,502,500. The Board of Review denied the protest and notified Hardage the January 1, 2009, assessment "was not changed because market data indicates that the property is assessed at fair market value."

Hardage then appealed to this Board, asserting the same grounds. The only issue before PAAB is whether the property is assessed for more than authorized by law. Iowa Code § 441.37(1)(b). Hardage seeks \$1,243,000 in relief and believes the correct assessment is \$3,307,000; allocated \$1,060,000 to land and \$2,247,000 to the improvements.

The subject property, locally known as Chase Suite Hotel, is a 112-unit, limited-service hotel built in 1988. The property consists of fourteen, two-story, eight-unit buildings along with one building for clubhouse/office use. All units have exterior access only, and the second-story units are accessed by individual wooden stairways. The property was designed for extended-stay travelers with each unit including a kitchen with a sink, refrigerator, microwave, and stove. It has an outdoor pool, a tennis court, and the hotel's exercise room was being converted into a board room for meetings. The site consists of 3.56 acres and backs to an Interstate 80 right-of-way. Access to the site from Forest Avenue is via a thirty-foot, private-drive easement. Several other hotels operate adjacent to and nearby the subject.

Russ G. Manternach, of Commercial Appraisers of Iowa, Inc., West Des Moines, appraised the property and testified at the hearing as a witness for Hardage. Manternach performed all three approaches to value. He valued the subject property using the sales comparison approach at \$3,700,000; the cost approach at \$3,920,000; and the income approach at \$3,830,000. He reconciled these three approaches for a value of \$3,800,000. He then subtracted \$290,000 for furniture, fixtures, and equipment to arrive at the final value as of January 1, 2009, of \$3,510,000.

Manternach completed a sales comparison approach and used four Iowa sales: three in the Des Moines metro area and one in Sioux City. The four properties sold between April 2007 and October 2009 and were adjusted to reflect the assessment date. The sales were of buildings with interior room corridors. Manternach testified these were decent comparables in close proximity to the subject and explained his adjustments, both on direct and cross-examination, and why they were reasonable for a

commercial property like the subject. He made the following net adjustments to his comparable sales: 15% for sale one, 1% for sale two, 6% for sale three, and 16% for sale four. His sales comparison approach concluded a range of value per unit of \$30,079 to \$37,637. Manternach reconciled a value of \$33,000 per unit for a total value of \$3,700,000. We find these sales to be reasonable comparables and a good measure of the market value for the subject property as of January 1, 2009.

For Manternach's income approach, he applied a 60% occupancy rate and a \$76 average daily rate (ADR). After deducting expenses, he arrived at net operating income \$503,005. Capitalized at 13.14%, his opinion of value under the income approach was \$3,830,000. Manternach's income approach included historical operating data regarding the subject's actual occupancy rates. In 2007, the reported occupancy rate was 55.63%; for 2008 it was 65.91% and for 2009 it was 50.66%. As discussed below, there was testimony that the 2008 occupancy rate did not represent a normal year. We find that Manternach used reasonable market occupancy and average daily rates in his income approach.

Manternach testified in detail to his appraisal at hearing and was cross-examined by the Board of Review. We find Manternach to be knowledgeable and a reliable and credible witness.

Mark Rousseau, Senior Vice-President of Molinaro Koger, Atlanta, Georgia, completed a "broker's opinion of value" and testified for Hardage by telephone. Rousseau has thirty-plus years experience in the hospitality industry and is currently involved in hotel purchase and sale transactions as a broker. Rousseau stated he was familiar with the subject property and its "garden-style" layout. He added that trade professionals refer to these properties as "orphans," because leading hotel brands will not consider purchasing or investing in this type of property. He noted that exterior-access units are obsolete, are a high security risk and are unpopular with guests, especially among women travelers. In addition, he stated that inclement weather poses additional challenges and expenses to operating "garden-style" units such as the subject.

Rousseau was knowledgeable regarding the lodging industry. He referenced data from Smith Travel Research and reported that during 2008, revenue per available room (RevPAR) started trending downward for the first time since 2003. He further noted “a consistent negative trend started in August and continued to deepen throughout the rest of 2008.” Rousseau opined that around January 1, 2009, the market “was collapsing.” Rousseau’s report includes market occupancy rates for the Des Moines Airport/West Market Statistics that indicates the following: a 63.6% occupancy rate for the twelve months preceding December 2007, a 59.8% occupancy for the twelve months preceding December 2008, and a 56.7% occupancy rate for twelve months preceding May 2010.

Rousseau did not do a cost approach or sales comparison approach. He calculated four different methods of the income approach to value. Rousseau relied mostly on his discounted cash flow method and determined a range of value from \$2,544,000 to \$2,938,000. Even though Rousseau did not develop a comparable sales approach, we find him to be knowledgeable regarding the hotel industry, occupancy rates, and his estimate of value. The data Rousseau testified to supports a finding of the 60% market occupancy rate used by Manternach in his income approach.

Sam Hardage, owner of the subject property and other hotel properties, also testified at hearing. Hardage has been in the hotel business over forty years and provided credible evidence regarding the subject’s occupancy rate, income, and expense information. He testified to the poor economic condition for the industry in 2009, describing it as the worst year for the industry since 1932. Hardage strongly questions the assessment increase of almost \$1,000,000 during this period of time. Hardage stated that hotel values were declining nationwide at this time. Hardage also spoke to the specific challenges of operating the subject property. He described the subject’s location on a side-street as “difficult.” Hardage testified that the multiple-building design and exterior access to the first and second-floor rooms is difficult for housekeeping staff and increases operating costs. Additionally, Hardage testified that a large segment of customers are not available to them because of the exterior

room access. He noted that family travelers were not very frequent and that most guests are business travelers. Hardage stated the hotel relies on direct corporate sales and that many companies will not do business with Chase Suites due to security concerns for employees. He also opined that the subject property is obsolete and the list of potential buyers is narrowed significantly due to the site layout and the number of exterior-corridor buildings.

Hardage stated that his property's actual net operating income (NOI) was lower than the NOI's used by the appraisers. He also pointed out the property's actual expenses were much greater than those shown in the appraisals. Hardage pointed out the property's highest occupancy rate was in 2008 (around 65%), and noted the hotel had contracted with a film company for an extended stay during this period of time. This increased the occupancy rate and income for 2008 and part of 2009. However, Hardage stated the film company did not actually pay the hotel for room rentals, meals, and other expenses, and the occupancy rate and income for 2008 and part of 2009 were artificially inflated. We find Hardage to be honest and knowledgeable both regarding the hotel industry in general and the specific challenges of operating the subject property.

The Board of Review submitted two appraisals at the hearing. However, it did not call either of the appraisers as a witness and did not have any testimony regarding the subject property.

Dane R. Anderson, of Iowa Appraisal and Research Corp., Des Moines, Iowa, initially valued the property using the sales comparison approach at \$4,200,000 and arrived at a final conclusion of value of \$3,960,000 after subtracting furniture, fixtures, and equipment. Anderson's sales comparison approach considered four sales. He also made several "+" and "-" adjustments for amenities and quality/design but did not quantify these adjustments. All sales were of interior corridor buildings and three of the four sales also appear in Manternach's appraisal. The one that does not – Anderson's sale number three – was of a "top performing" Super 8 in Gretna, Nebraska and we give this sale less weight. Anderson made a 24% net adjustment to sale one, a 4% adjustment for sale two, a 21%

adjustment to sale three, and a 24% adjustment to sale four. Anderson's adjusted range of value per room was \$23,660 to \$37,407 and he concluded a value per unit of \$36,000. We note the sale in Gretna, Nebraska, established the upper end of Anderson's range. Anderson's sales approach concluded a total rounded value of \$4,000,000 before subtracting personal property. We also note the occupancy rates for Anderson's four sales, presumably around the time of the sales, were 55%, 49%, 52% and 56%.

Anderson also completed an income approach. Applying a 65% occupancy rate and \$76 ADR, he arrived at NOI of \$575,579. He capitalized this at 13.64% and subtracted personal property for a conclusion of value of \$3,960,000. The main distinction between Anderson's income approach and Manternach's is the occupancy rate. As discussed below, the record as a whole supports the 60% occupancy rate used by Manternach.

Gene F. Nelsen and Ranney Ramsey, of Nelsen Appraisal Associates, Inc., Urbandale, Iowa, appraised the property at \$4,350,000. The Nelsen appraisal commented about the site layout, noting that with the large amount of wood trim and balconies, it was more akin to apartments than most hotels. The appraisal included pictures showing rotting wood trim and deteriorating pavement and landscaping materials, and noted a drainage problem that is causing these problems. It noted the exterior wood stairs, decks and balconies, as well as concrete parking, needed major repairs.

The Nelsen appraisal considered two sales in the Des Moines area, one in Cedar Rapids, one in North Dakota, and one in Wisconsin. Like Manternach and Anderson, Nelsen's sales were all of interior corridor buildings. Nelsen noted he was "well aware the cited conveyances are less than ideal comparisons," but "sales of more comparable properties were not discovered." Sale one in West Des Moines was a Marriott Suites that sold in August 2007 for \$10,000,000. With 116 units, the sale price per room was \$86,207. The appraiser applied a 51% net adjustment to the sale price per room for an adjusted value of \$49,400. Sale one was also adjusted 27% for "economic attributes." The appraiser

made this adjustment because of this comparable's ability to generate more revenue than the subject. Sale two and sale four were in North Dakota and Wisconsin, respectively, and are not persuasive comparables. In addition, the remarks on sale two indicate the buyer paid an unspecified premium for the property. Sale three appears to be a good comparable. Nelsen made a 3% net adjustment and valued the property at \$46,084 per unit. The appraisal considered sale one and three as the best comparables, with an adjusted per unit range of \$46,084 to \$49,400 and a value for the subject property of \$47,750 per unit, or \$5,350,000 total. Nelsen appears to have adjusted for furniture, fixtures, and equipment in his "conditions of sale" adjustment but did not quantify and subtract personal property like Manternach and Anderson.

Nelsen completed an income approach. Applying a 65% occupancy rate at a \$76 ADR, he concluded an NOI of \$732,924. He capitalized the NOI at 13.394% and concluded an income approach to value of \$5,470,000 "as stabilized" for 2009. It does not appear a deduction for personal property was made in Nelsen's income approach. We find Nelsen's income approach the least persuasive as an indicator of fair market value for January 1, 2009.

All three appraisals noted a general decline in the hospitality industry towards the end of 2008, and all three appraisers considered evidence of comparable sales. One sale, at 1450 NW 118th Street, Clive, Iowa, appears in all three appraisals. Manternach made adjustments for this comparable being newer, in superior condition, and having a superior location. Anderson made adjustments to this comparable for being a newer property and in better condition. Anderson also described the location at 1450 NW 118th Street as similar.<sup>1</sup> Manternach's notes indicate this sale is located near the subject but has superior visibility and access compared to the subject. For this sale, Manternach and Anderson concluded adjusted values per unit of \$37,637 and \$34,107, respectively. Nelsen concluded an

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<sup>1</sup> Anderson's appraisal also describes the Gretna, Nebraska sale as being in a similar location.

adjusted value per unit of \$46,084. Overall, the sales in the Nelsen appraisal are less persuasive and are given little weight in the overall analysis.

The sales used by Manternach and Anderson were similar and concluded relatively similar values per unit, although Anderson had a much wider range of values. In the end, Manternach concluded \$33,000 per unit and Anderson concluded \$36,000. Manternach's value is in the middle of his range and is near the upper end of Anderson's range of values. Both appraisals are lower than the assessment. On the balance, we find Manternach's evidence and testimony regarding the sales comparable approach more persuasive and his conclusion a more accurate snapshot of the property's value on January 1, 2009.

The major difference between the income approaches submitted by the Board of Review's appraisers and Manternach are the occupancy rates and resulting net operating incomes. Manternach used an occupancy rate of 60%, and the other two appraisals used a 65% occupancy rate. The appraisals and testimony support a finding that 60% is an appropriate market occupancy rate for January 1, 2009. The pro forma income statements indicate the NOI used by Manternach is a reasonable market figure. All three appraisers appear to have correctly used market income and expense data and the record shows actual income is less than that used by all three appraisers and actual expenses are greater than the market expenses in the appraisals.

We find Manternach's appraisal provides the best evidence for the subject property, and we adopt his value of \$3,510,000, for the January 1, 2009, assessment.

### ***Conclusions of Law***

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal

Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.*; *Soifer v. Floyd County Board of Review*, 759 N.W.2d 775, 782 (Iowa 2009). The probable availability or unavailability of potential purchasers shall be considered in arriving at a market value. Iowa Code § 441.21(1)(b). If sales are not available, "other factors" may be considered in arriving at market value. *Id.* The assessed value of the property "shall be one hundred percent of its actual value." *Id.* at § 441.21(1)(a). There is no need in this appeal to look to the "other factors" approach as there was sufficient evidence of comparable sales in the record.

Generally, it is a complainant's burden when challenging a property assessment to show the assessment is excessive. Iowa Code § 441.21(3). However, if a complainant offers "competent evidence by at least two disinterested witnesses" that the market value of the property is less than the value determined by the assessor, the burden shifts to the party seeking to uphold the valuation. *Id.*

Three witnesses testified at hearing for Hardage Hotels. Sam Hardage is the owner of the subject property. While Mr. Hardage was knowledgeable about the hotel industry and the challenges of owning an exterior-access only, extended-stay building, he would not be considered a

“disinterested” witness. *Carlton Co. v. Board of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997) (citing *Post-Newsweek Cable Co. v. Board of Review of Woodbury County, Ia.*, 497 N.W.2d 810, 813 (Iowa 1993)). The term “disinterested” is not defined in the Code but has been interpreted by the courts as meaning, “one who has no right, claim, title, or legal share in the cause or matter in issue, and who is lawfully competent to testify.”<sup>2</sup> *Id.* Mr. Hardage was lawfully competent to testify; but as the owner of the subject property, he has a right, claim, title, or legal share in the cause or matter in issue and is not “disinterested” for the purpose of shifting the burden of proof to the Board of Review.

The other two witnesses were Manternach and Rousseau. Manternach completed all three approaches to value: comparable sales, cost, and income. On the other hand, Rousseau completed four different types of income approaches and did not consider evidence of comparable sales. While both were knowledgeable and credible witnesses, Rousseau’s report was not “competent” under Iowa Code section 441.21(3). To be competent evidence for the purpose of shifting the burden of proof to the Board of Review, the evidence “must comply with the statutory scheme for property valuation for tax assessment purposes.” *Boekeloo v. Board of Review of City of Clinton*, 529 N.W.2d 275, 279 (Iowa 1995). Iowa Code section 441.21 requires the sales comparable approach be used unless market value cannot be established under that method. *Soifer*, 759 N.W. 2d at 782. Manternach and the Board of Review’s appraisers considered evidence of comparable sales. Rousseau did not consider evidence of comparable sales and his evidence would not be “competent” for the purpose of shifting the burden. *See Ross v. Board of Review of City of Iowa City*, 417 N.W.2d 462, 464, 65 (Iowa 1988) (concluding evidence did not comport with subsections 441.21(1)(b) and 441.21(2) when failing to consider evidence of comparable sales and noting that three other witnesses considered evidence of comparable sales). While Rousseau did not develop a comparable sales approach, he completed an extensive income analysis and was a knowledgeable and credible witness with respect to both the hotel industry

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<sup>2</sup> Being “legally competent to testify” when considering whether a witness is “disinterested” under Iowa Code § 441.21(3) is not the same as the consideration of whether the witness is offering “competent evidence” under that section.

in general, occupancy rates around the time in question, and the challenges of operating and selling an exterior-access only, extended stay hotel.

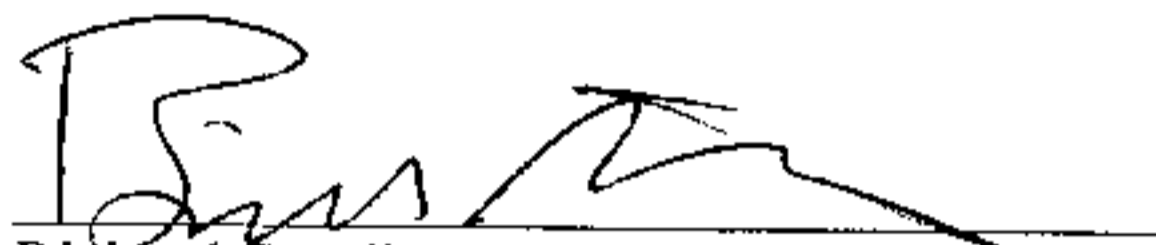
While Hardage did not shift the burden of proof to the Board of Review under Iowa Code section 441.21(3), the burden referred to in that section is a burden of persuasion. *Post-Newsweek Cable*, 497 N.W.2d at 813 (citing *Wunschel v. Board of Review*, 217 N.W.2d 576, 578 (Iowa 1974)). If the taxpayer fails to shift the burden, the taxpayer must prove by a preponderance of the evidence that the challenged valuation is excessive. *Id.*; *Richards v. Hardin County Board of Review*, 393 N.W.2d 148, 151 (Iowa 1986).


Hardage is claiming under Iowa Code section 441.37(1)(b) that the property is assessed for more than the value authorized by law. In an appeal that alleges the property is assessed for more than the value authorized by law, there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). As the finder of fact in the contested case hearings, it is PAAB's duty to determine if a property is comparable. *Soifer*, 759 N.W. 2d at 783. The appraisal report by Manternach is the best evidence of fair market value. It shows by a preponderance of the evidence the subject property is assessed for more than authorized by law and it provides the correct value for the subject property as of January 1, 2009.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment of the Hardage Hotel property located in Clive, Iowa, as determined by the Polk County Board of Review is modified to \$3,510,000.

The Secretary of the State of Iowa Property Assessment appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly.

Dated this 23 day of September 2011.

  
Richard Stradley, Presiding Officer

  
Jacqueline Rypma, Board Member

  
Karen Oberman, Board Member

Copies to:

Robert C. Thomson  
Grefe & Sidney, PLC  
500 E Court Avenue, Ste. 200  
Des Moines, IA 50309  
ATTORNEY FOR APPELLANT

David Hibbard  
Asst. Polk County Attorney  
111 Court Avenue, Room 340  
Des Moines, IA 50309  
ATTORNEY FOR APPELLEE

Jamie Fitzgerald  
Polk County Auditor  
111 Court Avenue  
Des Moines, IA 50309

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>9-23</u> , 2011.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
Signature	